80-243

No.

In the Supreme Court of the United States

OCTOBER TERM, 1979

UNITED STATES OF AMERICA, APPELLANT

v.

E. M. AND B. L. DARUSMONT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

QUESTION PRESENTED

Whether amendments to the minimum tax enacted on October 4, 1976, that increased the effective rate and broadened its applicability, can be constitutionally applied to transactions during the entire taxable year beginning January 1, 1976.

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OPINION BELOW

The findings of fact and conclusions of law of the district court (App. A, *infra*, 1a–4a) are not officially reported.

JURISDICTION

The judgment of the district court was entered on May 23, 1980 (App. B, *infra*, 5a–6a). A notice of appeal to this Court was filed on June 20, 1980 (App. C, *infra*, 7a–8a). The jurisdiction of this Court rests on 28 U.S.C. 1252, which authorizes a direct appeal to this Court from a final judgment of a court of the United States holding an Act of Congress unconstitutional in a civil action to which the United States is a party. A direct appeal lies where, as here, a statute is ruled unconstitutional as applied to particular circumstances. *Fleming* v. *Rhodes*, 331 U.S. 100 (1947). See *United States* v. *Christian Echoes Ministry, Inc.*, 404 U.S. 561, 563 (1972).

STATUTES INVOLVED

Sections 56 and 57 of the Internal Revenue Code of 1954 (26 U.S.C.), as amended by Section 301 of the Tax Reform Act of 1976, Pub. L. No. 94–455, 90 Stat. 1549, together with Section 301(g)(1) of the Tax Reform Act of 1976, 90 Stat. 1553, are set forth in App. D, *infra*, 9a–11a.

STATEMENT

On April 1, 1976, appellee E.M. Darusmont's[1] employer notified him that he was being transferred from Houston, Texas to Bakersfield, California (Darusmont Dep. 6–8).[2]

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[1] "Appellee" refers to E.M. Darusmont. B.L. Darusmont is a party to this action solely because she filed a joint return with her husband for 1976.

[2] References are to the original record on appeal.

He therefore undertook to sell his Houston residence, which was a three-unit house in which he occupied one unit and rented the remaining two units. Appellee retained the real estate firm of Coldwell Banker to assist him with the sale. Coldwell Banker advised appellee of a number of ways in which the house could be sold, including selling it as separate condominium units or as a whole and either for cash or on an installment basis (Darusmont Dep. 8–10).

On July 15, 1976, appellee sold the entire house for cash, thereby realizing a long-term capital gain. Because appellee purchased a replacement residence in California, he was able to defer recognition of the portion of the gain attributable to the unit of the house that he occupied pursuant to Section 1034 of the Internal Revenue Code of 1954. Appellee recognized gain on the sale of the other two units equal to $51,332.[3] After taking into account the deduction for one-half of net capital gains permitted by Section 1202 of the Code,[4] appellee included the remaining one-half of this gain in his taxable income. Appellee timely filed a joint income tax return with his spouse showing a 1976 income tax liability of $25,384, which was timely paid (Complaint).

This case involves the portion of appellee's liability, $2,280, attributable to the minimum tax, imposed by Section 56 on items of tax preference as defined in Section 57. The minimum tax (originally Sections 56, 57 and 58 of the 1954 Code) was enacted in 1969. Tax Reform Act of 1969, Pub. L. No. 91–172, Section 301, 83 Stat. 580. Originally, the minimum tax was imposed in addition to the regular

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[3]See App. C to the Memorandum for the Defendant in Support of its Motion for Reconsideration of its Motion for Judgment on the Pleadings.

[4]For years beginning after October 31, 1978, this deduction was increased to 60% of the net capital gain. Revenue Act of 1978, Pub. L. No. 95–600, Section 402, 92 Stat. 2867.

income tax, and was equal to 10% of the amount by which the total amount of the items of tax preference exceeded the sum of a $30,000 exemption and the taxpayer's regular income tax liability.

During the period in issue, one of the items of tax preference for individuals was the amount of the Section 1202 deduction for one-half of net capital gains (26 U.S.C. 57(a)(9)(A)). Accordingly, appellee's Section 1202 deduction for one-half of the capital gain recognized on the sale of his house was an item of tax preference. If the original exemption equal to the sum of $30,000 plus the regular tax liability had been retained for the year 1976, appellee would not have owed any minimum tax as a result of the sale of his house.

On October 4, 1976, however, the President signed the Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520. Section 301 of that Act, 90 Stat. 1549, increased the rate of the Section 56 minimum tax from 10% to 15% and reduced the amount of the exemption to the greater of $10,000 or one-half of the regular tax liability (with certain adjustments). See Section 56(a) and (c). Section 301(g)(l) of the 1976 Act, 90 Stat. 1553, with exceptions not here relevant, provided that "the amendments made by this section shall apply to items of tax preference for taxable years beginning after December 31, 1975."[5] As a result,

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[5]For tax years beginning after December 31, 1978, Congress has widened the scope of the minimum tax. Section 55 was added to the Internal Revenue Code of 1954 by Section 421(a) of the Revenue Act of 1978, Pub. L. No. 95-600, 92 Stat. 2871, and provides what is called the "alternative minimum tax" for taxpayers other than corporations. Section 56 still provides for the standard minimum tax, while Section 57 still lists and defines the items of tax preference. The untaxed portion of capital gains, however, is now an item of tax preference only for purposes of the alternative minimum tax imposed by Section 55 and not for purposes of the standard minimum tax imposed by Section 56. See the last sentence of Section 57(a).

one-half of the net capital gain that appellee recognized on the July 15, 1976 sale of his house was subject to a minimum tax of $2,280.

Upon the denial of his claim for refund of $2,280 of minimum tax, appellee instituted this refund suit in the United States District Court for the Eastern District of California. He argued that the 1976 amendments to the minimum tax provisions could not constitutionally be applied to transactions entered into prior to the enactment of the Tax Reform Act. In support of his argument, appellee asserted that, had he known that the sale of his house would have triggered a liability for the minimum tax, he could have structured the sale so as to avoid that tax[6] (Complaint, Exh. A). The district court upheld appellee's claim. It ruled that the application of the 1976 amendments to transactions consummated in that part of 1976 prior to enactment subjected appellee "to a new, separate and distinct tax" and was "so arbitrary and oppressive as to be a denial of due process" guaranteed by the Fifth Amendment (App. A, *infra*, 3a).

THE QUESTION IS SUBSTANTIAL

The ruling of the district court—that an amendment to a taxing statute cannot constitutionally be applied to transactions occurring in the same taxable year as, but prior to, its enactment—is contrary to a settled line of decisions of this Court. If the judgment of the district court is permitted to stand, the power of Congress to enact any

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[6]The evidence below was conflicting with regard to appellee's reliance on existing tax law in structuring the sale. For example, in his deposition, appellee stated that "the main reason" he sold his house for cash was to avoid trips back to Houston to check up on the property (Darusmont Dep. 10). Further, appellee conceded that when he was considering the various ways in which he could dispose of his property, he was not even aware of the existence of the minimum tax (Darusmont Dep. 12, 16).

revenue statute with an effective date prior to the date of enactment will be drawn into question. Such limited retroactive application of taxing statutes—if, indeed, the term "retroactive" accurately characterizes an amendment applicable to the net results of the aggregate of transactions for the year of enactment—is the customary congressional practice.[7] Thus, the decision of the district court threatens to affect adversely the administration of the revenue by circumscribing what had heretofore been regarded as the unquestioned prerogative of Congress in enacting tax statutes. Moreover, in ruling that application of the 1976 minimum tax amendments to transactions occurring prior to October 4, 1976, is "so arbitrary and oppressive as to be a denial of due process" (App. A, *infra*, 3a), the decision of the district court squarely conflicts with *Buttke* v. *Commissioner*, No. 79-1885 (8th Cir. July 9, 1980), aff'g 72 T.C. 677 (1979).[8]

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[7] Cf. Slawson, *Constitutional and Legislative Considerations in Retroactive Lawmaking*, 48 Calif. L. Rev. 216 (1960); Ballard, *Retroactive Federal Taxation*, 48 Harv. L. Rev. 592 (1935).

See, *e.g.*, Income Tax Act of 1913, ch. 16, Section II D, 38 Stat. 168; Revenue Act of 1916, ch. 463, Sections 8(b), 13(b), 39 Stat. 761, 771; Revenue Act of 1917, ch. 63, Sections 1, 2, 4, 40 Stat. 300-302; Revenue Act of 1918, ch. 18, Section 200, 40 Stat. 1058; Revenue Act of 1921, ch. 136, Section 200(1), 42 Stat. 227; Revenue Act of 1924, ch. 234, Section 200(a), 43 Stat. 254; Revenue Act of 1926, ch. 27, Section 200(a), 44 Stat. 10; Revenue Act of 1928, ch. 852, Sections 1, 48(a), 45 Stat. 795, 807; Revenue Act of 1932, ch. 209, Sections 1, 48(a), 47 Stat. 173, 187; Revenue Act of 1934, ch. 277, Sections 1, 48(a) and (b), 48 Stat. 683, 696; Revenue Act of 1936, ch. 690, Sections 1, 48(a) and (b), 49 Stat. 1653, 1669; Revenue Act of 1938, ch. 289, Sections 1, 48(a) and (b), 52 Stat. 452, 475; Internal Revenue Code of 1939, Sections 1, 48(a) and (b) (26 U.S.C. (1946 ed.)); Internal Revenue Code of 1954, Section 7851(a)(1)(A) (26 U.S.C.).

[8] The question presented is also pending in three other courts of appeals. *Metzger* v. *United States*, No. 78-0346-S (S.D. Cal. Feb. 16, 1979), appeal pending, No. 79-3184 (9th Cir.); *Westwick* v. *Commissioner*, 38 T.C.M. 1269 (1979), appeal pending, No. 79-2245 (10th Cir.); *Estate of Lewis* v. *Commissioner*, 40 T.C.M. (CCH) 78 (Apr. 2, 1980), appeal pending, No. 80-1736 (5th Cir.).

1. This Court has long held that the application of income tax statutes to the entire year of enactment does not *per se* violate the Due Process Clause of the Constitution. See, *e.g.*, *Stockdale* v. *Insurance Companies*, 87 U.S. (20 Wall.) 323, 331, 332, 341 (1873); *Brushaber* v. *Union Pac. R.R.*, 240 U.S. 1, 20 (1916); *Cooper* v. *United States*, 280 U.S. 409, 411 (1930); *Milliken* v. *United States*, 283 U.S. 15, 21 (1931); *Reinecke* v. *Smith*, 289 U.S. 172, 175 (1933); *United States* v. *Hudson*, 299 U.S. 498, 500–501 (1937); *Welch* v. *Henry*, 305 U.S. 134, 146, 148–150 (1938); *Fernandez* v. *Wiener*, 326 U.S. 340, 355 (1945).[9] Thus, in *Brushaber* v. *Union Pac. R.R.*, *supra*, the Court held that the income tax enacted on October 3, 1913, could constitutionally reach income earned after March 1, 1913. As the Court stated (240 U.S. at 20, quoting from *Stockdale* v. *Insurance Companies*, *supra*, 87 U.S. (20 Wall.) at 331):

> "The right of Congress to have imposed this tax by a new statute, although the measure of it was governed by the income of the past year, cannot be doubted; much less can it be doubted that it could impose such a tax on the income of the current year, though part of that year had elapsed when the statute was passed."

Twenty years later in *United States* v. *Hudson*, *supra*, 299 U.S. at 500, the Court reaffirmed the teaching of *Brushaber:*

> As respects income tax statutes it long has been the practice of Congress to make them retroactive for relatively short periods so as to include profits from transactions consummated while the statute was in process of enactment, or within so much of the calendar year as preceded the enactment; and repeated de-

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[9] See Ballard, *Retroactive Federal Taxation*, 48 Harv. L. Rev. 592 (1935); Hochman, *The Supreme Court and the Constitutionality of Retroactive Legislation*, 73 Harv. L. Rev. 692, 706–711 (1960).

cisions of this Court have recognized this practice and sustained it as consistent with the due process of law clause of the Constitution.

The lower courts have uniformly followed these decisions.[10] Indeed, apart from the decision below, every court that has addressed the question presented has held that the application of the increase in the effective rate and scope of the minimum tax to the beginning of 1976 does not violate the Due Process Clause. *Buttke* v. *Commissioner*, *supra*; *Estate of Kearns* v. *Commissioner*, 73 T.C. 1223 (1980); *Estate of Lewis* v. *Commissioner*, 40 T.C.M. 78 (CCH) (Apr. 2, 1980), appeal pending, No. 80-1736 (5th Cir.); *Schopp* v. *Commissioner*, 40 T.C.M. (CCH) 275 (Apr. 29, 1980); *Westwick* v. *Commissioner*, 38 T.C.M. 1269 (1979), appeal pending, No. 79-2245 (10th Cir.); *Appendrodt* v. *United States*, 490 F. Supp. 490 (W.D. Pa. 1980); *Metzger* v. *United States*, No. 78-0346-S (S.D. Cal. Feb. 16, 1979), appeal pending, No. 79-3184 (9th Cir.). It is therefore hardly surprising that the court below reached its unique conclusion that "the retroactive application of the statute herein involved is so arbitrary and oppressive as to be a denial of due process" (App. A, *infra*, 3a) without the citation of a single supporting authority.

2. There are important reasons underlying the decisions upholding the application of income taxes to the entire year of enactment. The income tax is neither a penalty imposed upon a taxpayer, nor a liability assumed by contract. To the contrary, it is simply a means of apportioning

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[10] See, *e.g.*, *Prescott* v. *Commissioner*, 561 F.2d 1287, 1294 (8th Cir. 1977); *Purvis* v. *United States*, 501 F.2d 311, 313-314 (9th Cir. 1974), cert. denied, 420 U.S. 947 (1975); *Picchione* v. *Commissioner*, 440 F.2d 170, 173 (1st Cir.), cert. denied, 404 U.S. 828 (1971); *Cohan* v. *Commissioner*, 39 F.2d 540, 545 (2d Cir. 1930); *First National Bank in Dallas* v. *United States*, 420 F.2d 725, 729 (Ct. Cl.), cert. denied, 398 U.S. 950 (1970); *Rose* v. *Commissioner*, 55 T.C. 28, 31 (1970).

the cost of government. *Welch* v. *Henry*, *supra*, 305 U.S. at 146–147. Every taxpayer at the end of the year is called upon to contribute to that cost. The application of a tax to the beginning of a calendar year permits Congress better to allocate the cost to those taxpayers who it determines should bear it. Cf. *Shanahan* v. *United States*, 447 F.2d 1082, 1083 (10th Cir. 1971). Thus, Judge Learned Hand observed in *Cohan* v. *Commissioner*, 39 F.2d 540, 545 (2d Cir. 1930):

> Nobody has a vested right in the rate of taxation, which may be retroactively changed at the will of Congress at least for periods of less than twelve months; Congress has done so from the outset. * * * Such a one may indeed complain that, could he have foreseen the increase, he would have kept the transaction unliquidated, but it will not avail him; he must be prepared for such possibilities [the retroactive increase in tax rates], the system being already in operation.

The application of the amended minimum tax at issue here is therefore well within the boundaries of congressional authority. The 1976 amendments did not create a new tax, for the minimum tax already existed and the untaxed portion of capital gain income already was an item of tax preference.[11] The legislative history is plain,

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[11] The only revenue statutes that previously have been held void for retroactivity involved new types of taxes. Thus, the decisions in *Nichols* v. *Coolidge*, 274 U.S. 531 (1927) (estate tax), *Blodgett* v. *Holden*, 275 U.S. 142 (1927) (gift tax), and *Untermyer* v. *Anderson*, 276 U.S. 440 (1928) (gift tax), are inapposite and do not support the district court's decision that appellee has been unconstitutionally taxed. Indeed, subsequent decisions of this Court have indicated that the holdings in *Nichols*, *Blodgett*, and *Untermyer* are to be narrowly construed. See, *e.g.*, *Welch* v. *Henry*, *supra*, where those cases were not followed on the ground that "a tax on the receipt of income is not comparable to a gift tax" (305 U.S. at 148). And in *Cooper* v. *United States*, 280 U.S. 409, 412 (1930), the Court, in upholding the retroactive application of an income tax similarly refused to attach importance

moreover, that by increasing the stated rate of the minimum tax from 10% to 15% and reducing the exemption, Congress did nothing more than increase the effective rate of the minimum tax. See Staff of the Joint Committee on Taxation, 94th Cong., 2d Sess., *General Explanation of the Tax Reform Act of 1976*, at 105 (Comm. Print 1976).

3. In striking down the amendment to the minimum tax as applied to appellee, the district court reasoned that "[t]axpayers are not required to be aware of impending changes in the tax law in conducting their affairs, but may rely upon existing law with regard to taxes applicable to a voluntary transaction until such time as the law has been changed" (App. A, *infra*, 3a–4a). Whether appellee in fact relied upon the existing minimum tax rates is subject to considerable doubt (see page 4, note 6, *supra*). But even if appellee was aware of the minimum tax, the precedents of this Court establish beyond question that he was not entitled as a matter of law to rely upon the continued existence of the tax rates in effect at the time he sold his house.

Nor can appellee or any other similarly-situated taxpayer claim surprise at the amendments to the minimum tax. The proposed increase in the effective rate of the minimum tax had been under public discussion for almost a year before its enactment. As early as November 12, 1975, some eight months before the sale in question was consummated, Congress had evidenced its intention to raise the minimum tax rate and to reduce the allowable exclusions. See H.R. Rep. No. 94–658, 94th Cong., 1st Sess. 130–132 (1975), which proposed raising the minimum tax rate to 14%, reducing the exemption to a maximum of

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to the earlier estate and gift cases. There, the Court stated: "None of these cases [*Nichols*, *Blodgett*, and *Untermyer*] is in point; they gave no consideration to the power of Congress to require that taxable income should include profits from transactions consummated within the year."

$20,000, and reducing the deduction for regular taxes by one-half. On June 10, 1976, the Senate Finance Committee issued its report recommending an increase in the minimum tax rate to 15% and a reduction in the exemption to the greater of $5,000 or the amount of the regular tax liability. S. Rep. No. 94-938, 94th Cong., 2d Sess. 108-114 (1976).

The Tax Reform Act of 1976 reflected a compromise between these two proposals. Both the House and Senate bills, moreover, provided that the changes to the minimum tax were to be effective for all taxable years beginning after December 31, 1975. Thus, appellee had ample advance notice of the increase in the effective minimum tax rate. In these circumstances, the district court erred in holding that the effect of the increased minimum tax rate was "not only harsh and oppressive but basically unfair, and violative of the Fifth Amendment to the United States Constitution" (App. A, *infra*, 3a).

CONCLUSION

Probable jurisdiction should be noted.[12]

Respectfully submitted.

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[12] In light of this Court's governing precedents, the Court may wish to consider summary reversal.

APPENDIX A

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[Filed May 23, 1980]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CASE NO. F-77-192 Civ.

E. M. & B. L. DARUSMONT, PLAINTIFFS,

vs.

UNITED STATES OF AMERICA, DEFENDANT.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on regularly for hearing of Plaintiffs' Motion for Summary Judgment on December 21, 1978, before the Court sitting without a jury. Michael C. Mitchell, Esq., appeared as counsel for Plaintiffs, and Mitchell B. Dubick, Esq., of the Department of Justice, appeared as counsel for Defendant. The Court having reviewed the record and having examined the proofs offered by the re-

spective parties, and the cause having been submitted for decision, and the Court being fully advised in the premises makes its Findings of Fact as follows:

FINDINGS OF FACT

It is true that:

1. During the month of May, 1976, Plaintiffs discussed several different alternatives for structuring the sale of their triplex apartments in Houston, Texas, with the real estate firm that handled the sale. Plaintiff ELVON M. DARUSMONT made his own basic analysis of the tax consequences of the various alternatives presented, concluded that an outright sale of the triplex apartments would be subject only to a capital gains tax, and confirmed this conclusion with friends and co-workers.

2. The conclusion made by Plaintiffs that an outright sale of their triplex apartments would be subject only to a capital gains tax was correct at the time the decision was made, as well as at the time of sale.

3. In September, 1976, Congress passed the 1976 Tax Reform Act, which was signed by the President on October 4, 1976. Its provisions affected the "minimum tax on tax preferences" by (a) raising the minimum tax rate from ten percent to fifteen percent, and (b) reducing the exemption to $10,000.00 or one-half of the regular tax liability, whichever is greater, which replaced the $30,000.00 prior exemption and deduction for regular taxes [Section 301 (g) (1) of the Tax Reform Act of 1976].

4. As a result of this retroactive aspect of Section 301(g)(1), Plaintiffs were subjected to $2,280.00 in additional federal income taxes which they could have completely avoided if they had selected one of the other two alternatives available to them with regard to the structuring of the sale of their triplex apartments.

5. On the basis of the tax laws that existed at the time of listing the property and at the time of sale, Plaintiffs could not have knowledgeably made a correct decision with regard to tax consequences.

6. Under the particular facts of this case, the amount of tax could not have reasonably been anticipated by Plaintiffs at the time of their voluntary act of fixing the terms of sale which the statute later increased the tax upon.

7. As applied to the facts of this case, Congress' retroactive amendment of the minimum tax on tax preference items subjected Plaintiffs' transaction to a new, separate and distinct tax to which it was not subject at the time Plaintiffs made their decisions regarding alternatives of sale and the tax consequences thereof.

The following Conclusions of Law, insofar as they may be considered Findings of Fact, are so found by this Court to be true in all respects.

From the foregoing facts the Court concludes:

CONCLUSIONS OF LAW

1. Since the taxpayer had the right to rely upon the tax laws as they existed at the time of sale, the retroactive application of the statute herein involved is so arbitrary and oppressive as to be a denial of due process.

2. It is not the nature of the tax that is objectionable, but the circumstances in which it is laid which makes it not only harsh and oppressive but basically unfair, and violative of the Fifth Amendment to the United States Constitution.

3. Taxpayers are not required to be aware of impending changes in the tax law in conducting their affairs, but may rely upon existing law with regard to taxes applicable to a

voluntary transaction until such time as the law has been changed.

DATED: May 23rd, 1980

/s/ _____
M. D. CROCKER
United States District Judge

APPENDIX B

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E. M. DARUSMONT AND B. L. DARUSMONT

[Filed May 23, 1980]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Case No. F-77-192 Civ.

E. M. & B. L. DARUSMONT, PLAINTIFFS,

v.

UNITED STATES OF AMERICA, DEFENDANT.

JUDGMENT

Now, by virtue of the Findings of Fact and Conclusions of Law separately made by the Court, and filed herein,

IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs E. M. and B. L. DARUSMONT have judgment against, and recover from, Defendant the UNITED STATES OF AMERICA, overpayments in the sum of $2,280.00, made on April 15, 1977, together with interest thereon as provided by law, to a date preceding the issuance of the refund check by not more than thirty days, such date to be determined by the Commissioner of Inter-

nal Revenue, together with their costs to be taxed by the Clerk of the Court in the sum of $85.18.

DATED: May 23rd, 1980

/s/ _____
M. D. CROCKER
United States District Judge

APPENDIX C

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[Filed June 20, 1980]

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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

CIVIL NO. F-77-192

E. M. & B. L. DARUSMONT, PLAINTIFFS,

v.

UNITED STATES OF AMERICA, DEFENDANT.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that the United States, defendant above-named hereby appeals to the Supreme Court of the United States from the final judgment of the United States District Court for the Eastern District of

California granting plaintiffs' Motion for Summary Judgment, entered in this action on May 23, 19 .

This appeal is taken pursuant to 28 U.S.C. §1252

HERMAN SILLAS
United States Attorney

/s/ _____
MITCHELL DUBICK
Counsel for Defendant

APPENDIX D

INTERNAL REVENUE CODE OF 1954 (26 U.S.C.):

SEC. 56 [as added by Section 301(a), Tax Reform Act of 1969, Pub. L. No. 91-172, 83 Stat. 580] IMPOSITION OF TAX.

(a) [as amended by Section 301(a), Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1549] *General Rule.*—In addition to the other taxes imposed by this chapter, there is hereby imposed for each taxable year, with respect to the income of every person, a tax equal to 15 percent of the amount by which the sum of the items of tax preference exceeds the greater of—

(1) $10,000, or

(2) the regular tax deduction for the taxable year (as determined under subsection (c)).

* * * * *

(c) [as amended by Section 301(b)(2), Tax Reform Act of 1976, Pub. L. No 94-455, 90 Stat. 1550] *Regular Tax Deduction Defined.*—For purposes of this section, the term "regular tax deduction" means an amount equal to one-half of (or in the case of a corporation, an amount equal to) the taxes imposed by this chapter for the taxable year (computed without regard to this part and without regard to the taxes imposed by sections 72(m)(5)(B), 402(e), 408(f), 531, and 541, reduced by the same of the credits allowable under—

(1) section 33 (relating to foreign tax credit),

(2) section 37 (relating to credit for the elderly),

(3) section 38 (relating to investment credit),

(4) section 40 (relating to expenses of work incentive program),

(5) section 41 (relating to contributions to candidates for public office),

(6) section 42 (relating to general tax credit),

(7) section 44 (relating to purchase of new principal residence), and

(8) section 44A (relating to expenses for household and dependent care services necessary for gainful employment).

SEC. 57 [as added by Section 301(a), Tax Reform Act of 1969, Pub. L. No. 91-172, 83 Stat. 580, and amended] ITEMS OF TAX PREFERENCE.

(a) *In General.*—For purposes of this part, the items of tax preference are—

* * * * *

(9) *Capital gains.*—

(A) *Individuals.*—In the case of a taxpayer other than a corporation, an amount equal to one-half of the net capital gain for the taxable year.

(B) *Corporations.*—In the case of a corporation having a net capital gain for the taxable year, an amount equal to the product obtained by multiplying the net capital gain by a fraction the numerator of which is the sum of the normal tax rate and the surtax rate under section 11, minus the alternative tax rate under section 1201(a), for the taxable year, and the denominator of which is the sum of the normal tax rate and the surtax rate under section 11 for the taxable year. In the case of a corporation to which section 1201(a) does not apply, the amount under this subparagraph shall be determined under regulations prescribed by the Secretary in a manner consistent with the preceding sentence.

* * * * *

TAX REFORM ACT OF 1976, Pub. L. No. 94-455, Section 301(g)(1), 90 Stat. 1553, provides:

SEC. 301. MINIMUM TAX

* * * * *

(g) EFFECTIVE DATE.—

(1) *In General.*—Except as provided by paragraph (4), the amendments made by this section shall apply to items of tax preference for taxable years beginning after December 31, 1975.

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